## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:17-cv-485-FDW

DANNY R. HEMBREE, JR.,	)	
Plaintiff,	)	
vs.	)	<u>ORDER</u>
FNU BRANCH, et al.,	)	
Defendants.	)	
	)	

**THIS MATTER** is before the Court on Plaintiff's "Written Objection to Defendants Amended Certificate of Service for Defendants Whitlock and Branch," (Doc. No. 25), and Defendants Flitt and Kim's Motions for Extension of Time to Answer Plaintiff's Complaint, (Doc. Nos. 27, 28).

In his Written Objection, Plaintiff asks the Court to strike Defendants' Amended Certificate of Service for Defendants Whitlock and Branch's Motion to Dismiss or Quash. (Doc. No. 18). He argues that the Amended Certificate of Service is invalid because it refers to the Gaston County Sheriff's Department as a Defendant even though the Department was dismissed on initial review.

Motions to Strike are governed by Rule 12(f) of the Federal Rules of Civil Procedure which states that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). A "pleading" is defined as "(1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer." Fed. R. Civ. P. 7(a). A motion to dismiss is not a pleading and therefore is not susceptible to a motion to strike. <u>Dalenko</u>

v. Stephens, 917 F. Supp. 2d 535, 541–42 (E.D.N.C. 2013). Even if this were not the case, Rule 12(f) does not apply because the information Plaintiff seeks to strike is not redundant, immaterial, impertinent, or scandalous. Accordingly, Plaintiff's Written Objections are construed as a Motion to Strike and will be denied.

Defendants Flitt and Kim seek a 20-day extension of time to file an Answer or otherwise respond to the Complaint. For good cause shown, the Motions will be granted until November 29, 2018.

## IT IS HEREBY ORDERED that

- 1. Plaintiff's "Written Objection," (Doc. No. 25), is construed as a Motion to Strike and is **DENIED.**
- Defendants Flitt and Kim's Motions for Extension of time to Answer, (Doc. Nos. 27, 28) are GRANTED until November 29, 2018.

Signed: November 8, 2018

Frank D. Whitney

Chief United States District Judge